IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1726 of 2001

to

SPECIAL CIVIL APPLICATION No 1729 of 2001

with

SPECIAL CIVIL APPLICATION Nos.4011, 4012, 4013, 4015, 4017, 4019, 4021, 4022 & 4023 of 2001.

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

EXECUTIVE DIRECTOR

Versus

SECRETARY, GUJ PETROLEUM

Appearance:

1. Special Civil Application No. 1726 to 1729 of 2001

MR MIHIR THAKORE, SR. ADVOCATE WITH MR AJAY R MEHTA

for Petitioner
MR TR MISHRA for Respondent No. 1
RULE SERVED for Respondent No. 2

2. Special Civil Application No.4011, 4012, 4013, 4015, 4017, 4019, 4021, 4022 and 4023 of 2001.

MR RAJNI H. MEHTA for the petitioner.
MRS. SANGEETA PAHWA for the respondents.

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 29/12/2004

ORAL JUDGEMENT

In Special Civil Application Nos.1726 to 1729 of 2001, counsel appearing for the parties had requested this Court that instead of hearing the matters for deciding the question for interim relief, the petitions can be taken up for final disposal considering the issues involved. Accordingly, these petitions have been heard for final disposal at the joint request of the learned advocates.

2. When this request was being considered, learned counsel Shri R.H.Mehta had submitted that the group of petitions being Special Civil Application Nos.4011, 4012, 4013, 4015, 4017, 4019, 4021, 4022 and 4023 of 2001 which are admitted, have been ordered to be heard with Special Civil Application No.1726 to 1729 of 2001 and the same may also therefore be heard along with this group of matters. Accordingly, Special Civil Application Nos.4011, 4012, 4013, 4015, 4017, 4019, 4021, 4022 and 4023 of 2001 were also placed before this Court with the approval of the Hon'ble Chief Justice. Accordingly, all these matters have been heard for final disposal.

3. Since the question of law involved in both these groups of petitions is common, they have been heard together and are being disposed of by this common judgment.

4. The petitioner, i.e. ONGC Limited is common in all the petitions. The respondents are different Unions espousing the cause of their members. It appears that the Unions had raised different references before the Industrial Tribunal, Ahmedabad with respect to their demands for being treated as regular employees of the ONGC and had contended, inter alia, that their engagement

through contractor was sham and the arrangement was only a paper arrangement and in reality the ONGC was their employer.

5. In these references, petitioner ONGC moved applications questioning the jurisdiction of the Industrial Tribunal to entertain and decide the references. It was mainly contended that the concerned workmen were employed by the contractor and their terms and conditions would be governed by the provisions of the Contract Labour (Regulation and Abolition) Act, 1970. It was, therefore, contended that when there is no direct relation of employer-employee between the petitioner and the workmen, the references were not maintainable. It was, therefore, contended that the Industrial Tribunal has no jurisdiction to entertain the references and had requested that this issue be decided as a preliminary issue.

6. The Industrial Tribunal, however, by separate orders rejected the request of the petitioner ONGC and concluded that if the contract is proved to be sham and bogus and only a paper arrangement, it would be open for the Tribunal to grant appropriate relief since it will be permissible for the workers to raise an industrial dispute in this regard. The Tribunal, therefore, observed that on the basis of evidence which may be led, if the Tribunal comes to the conclusion that the workmen are employed by the Company, direct control is enjoyed by the Company and are engaged in activities directly for the company, in such a case, it would be open for the Tribunal to consider the workmen to be the employees of the Company and to grant them necessary benefits flowing from such a conclusion. The Tribunal, therefore, found that the applications of the petitioner could not be granted especially since it required the Tribunal to decide this issue as a preliminary issue and found that all the issues can be thrashed out at the time of final disposal of the references.

7. The orders passed by the Industrial Tribunal by which the applications of the petitioner ONGC came to be rejected as mentioned above have been challenged by the petitioner ONGC in this group of petitions. The conclusions reached by the Industrial Tribunal are eminently just and reasonable. The Tribunal when has refused to consider the question as a preliminary issue and deferred the final conclusion therein to be arrived at at the time of finally deciding the industrial disputes, no exception can be taken. In the case of Cooper Engineering v. P.P. Mundhe, AIR 1975 SC 1900,

the Hon'ble Supreme Court has observed that when the issues are decided at an interlocutory stage, it would be legitimate for the Court to refuse to interfere at that stage. These observations, of course, were made in light of the questions of legality of the departmental inquiry being decided by the Labour Court/Industrial Tribunal, the purpose for making for such observations was that there is no undue delay in industrial adjudication. In this view of the matter, it is not possible to interfere with the impugned orders passed by the Industrial Tribunal.

8. Even otherwise, the observations made by the Industrial Tribunal are supported by the decision of the Hon'ble Supreme Court in the case of Steel Authority of India v. National Union Waterfront Workers, (2001) 7 SCC 1 wherein the Hon'ble Supreme Court has made the following observations :

"125. xxxxx

(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or

other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

126. We have used the expression "industrial adjudicator" by design as determination of the questions aforementioned requires enquiry into disputed questions of facts which cannot conveniently be made by High Courts in exercise of jurisdiction under Article 226 of the Constitution. Therefore, in such cases the appropriate authority to go into those issues will be the Industrial Tribunal/Court whose determination will be amenable to judicial review."

9. The above view was reiterated in later decisions of the Hon'ble Supreme Court. In the case of Muncipal Corporation of Greater Mumbai v. K.V.Shramik Sangh, (2002) 4 SCC 609, while following the decision in the case of Steel Authority of India (supra), the Hon'ble Supreme Court found that the High Court could not have gone into the question whether the labour contract was sham or camouflage and such a question can be decided only by an industrial adjudicator. This view was once again reiterated in the decision of Ram Singh v. Union Territory, Chandigarh, (2004) 1 SCC 126.

10. In view of the above decisions of the Hon'ble Supreme Court, I find that the observations made by the Industrial Tribunal in its impugned orders are perfectly just and legal and call for no interference.

11. In the result, in view of the discussion hereinabove, I find that the petitioner has failed to demonstrate that the impugned orders are illegal or unjust. The petitions being devoid of merits are required to be and are hereby rejected. Rule is discharged in all the petitions. Ad-interim relief granted earlier in SCA Nos.1726 to 1729 of 2001 is vacated.

(Akil Kureshi, J.)

(vjn)